

be higher than 1.72 c.c. N/20 sodium ethylate per gram and never higher than 1.99 c.c. for any egg of edible commercial quality; that in no case were good shell eggs or frozen eggs ever found the acidity of the ether extract of which exceeded 2.5 c.c. per gram; that the acidity of this ether extract is always low when fresh sound eggs are used and high when decomposed or unsound eggs are used, and that the acidity of dried egg yolk prepared from sound fresh eggs was found to increase so slowly under ordinary conditions of storage that at the end of three years it does not equal 5. c.c., whereas egg products from decomposed eggs exhibit high acidity and a marked tendency for this acidity to increase rapidly; that, accordingly, sound eggs properly stored and shipped would show on arrival in the United States from China an acidity of from 2 to 3 c.c.; and that the acidity of the ether extract of dried egg yolk made from decomposed eggs often exceeds 5 c.c. at the time of drying, and, if not, it increases rapidly and soon exceeds that figure.

"From these scientific facts the Department concludes that when dried egg yolk shows an acidity of 5 c.c. or more on arrival in the United States that indicates that it was made from eggs which would have shown, if tested in the liquid state, the characteristics of such decomposition as amounts to staleness or rottenness clearly within the meaning of the word decomposition as used in the statute, but which cannot be detected by the organoleptic test after drying because the volatile products of decomposition are driven off by drying, or else that such a percentage of acidity shows that the egg yolk was improperly dried or stored and thus became decomposed after drying.

"The acid test seems to be a good test of whether the fatty part of the egg has been attacked by decomposition. Eggs may have a bad odor and show a low acidity, for it is conceded that the test does not detect protein decomposition, but eggs with a bad odor would be excluded as putrid. Thus, eggs may be filthy, decomposed, and putrid, and they may not have a high acidity, but, if they have a high acidity, that shows that the fatty part of the egg has been affected by decomposition. Many tests may be required to show that an egg is good in all respects, but any one of a number may suffice to show that it is bad in a certain respect. Though the affidavits of chemists, dealers, and dieticians used in support of the motion deny that the Government's acid test shows that dried egg yolk is decomposed, or that decomposed liquid eggs were used in making it, it cannot be said, in view of the statements set forth in defendants' affidavits, that the test adopted by the Government is arbitrary or capricious (see *United States v. Bartram Bros.* (C.C.A.) 131 F. 833; *Commercial Solvents Corp. v. Mellon* 51 App.D.C. 146, 277 F. 548), or that the complainant shows reasonable probability of ultimate success. Where the facts are disputed, a preliminary injunction will not issue. *Cumberland T. & T. Co. v. Stevens* (D.C. 274 F. 745; *Wisconsin-Minnesota L. & P. Co. v. Railroad Commission of Wisconsin* (D.C.) 267 F. 711.

"The motion for a preliminary injunction is denied. However, in view of the sharp conflict in the opinion of experts and the desirability of an early determination of the issue, the action will be given a preference, if desired."

On July 28, 1932, the case was discontinued.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20150. Adulteration of cherries. U.S. v. 135 Baskets of Cherries. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 28885. Sample No. 8469-A.)

This action involved a shipment of cherries which were found to bear arsenic in an amount which might have rendered the article injurious to health.

On August 11, 1932, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for the district aforesaid a libel praying seizure and condemnation of 135 baskets of cherries, remaining in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped in interstate commerce on or about August 9, 1932, by Albert Sutterlein, from Interlaken, N.Y., to Philadelphia, Pa., and charging adulteration in violation of the Food and Drugs Act.

It was alleged in the libel that the article was adulterated in that it contained an added poisonous or deleterious ingredient, arsenic, which might have rendered it harmful to health.

On August 31, 1932, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

R. G. TUGWELL, *Acting Secretary of Agriculture.*